



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,098	02/25/2004	Thomas Mohr	Q79903	8800
23373 7590 03/26/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER NGUYEN, BRIAN D				
ART UNIT 2616		PAPER NUMBER		
MAIL DATE 03/26/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/785,098

Applicant(s)

MOHR, THOMAS

Examiner

BRIAN D. NGUYEN

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 2 and 6 are objected to because of the following informalities:

Claims 2, and 6, the term: “adapted” is not positively recited limitation. Therefore, limitations followed this term are not considered the claimed limitations. If the applicants want to claim these limitations; it is suggested to delete “adapted” from the claims.

Claim 6, line 2, it is suggested to insert --connected-- after “line interface”. Line 4, it is suggested to insert --connected-- before “network controller”.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-5, and 7 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh et al (6,751,660) in view of Fink et al (7,043,633).

Regarding claim 1, Mansingh discloses a network monitor (114) for monitoring traffic on a dedicated packet-switched data network connecting network controllers controlling associated network elements (120) of an automatically switched optical transport network (see network in figure 1); the network controllers advertise the network topology and status (see col. 4, lines 30-32 and 66-67) and the monitor receives the network topology and status information from the controllers (see col. 6, lines 8-14) and displays these information to a user (see col. 5, lines 17-23 and col. 6, lines 14-16). Mansingh does not specifically disclose passively monitoring the traffic, filter protocol frames of a predefined protocol type by which the network controllers advertise the network topology and status and extract from the filtered protocol frames information about the topology and status of the transport network. However, passively monitoring the traffic to extract the topology and status information is well known in the art. Fink discloses this well-known feature 9 (see col. 2, lines 37-47). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to passively monitor the traffic and

extract the information as taught by Fink in the system of Mansingh in order to use the information for managing the network.

Regarding claim 2, Fink discloses the use of a sniffer (see col. 2, line 38). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the sniffer as taught by Fink in the system of Mansingh in order to capture data from the network connection.

Regarding claim 3, Mansingh further discloses the predefined protocol type is OSPF (see col. 4, lines 23-25).

Regarding claims 4 and 5, Mansingh discloses the network includes a plurality of domains (see col. 5, lines 52-54) and displaying the topology and status information graphically to a user but does not specifically disclose the use of small circles, large circles, and colors to describe network elements or states. However, to use circles, colors or any other symbols to describe a network element or status is a matter of design choice. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use circles and colors in order to distinguish one element from the others.

Regarding claim 6, Mansingh further discloses a command line interface to one of the network controllers adapted to program the connected network controller to broadcast a request for an immediate update of topology and status information and/or to program the network controller to set up a new connection and/or perform other configuration changes in the automatically switched optical transport network (see col. 7, lines 29-67).

Regarding claim 8, claim 8 is a method claim that has substantially all the limitations of the respective apparatus claim 1. Therefore, it is subject to the same rejection.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansingh in view of Fink as applied to claim 1 above, and further in view of Clemm et al (7,126,941).

Regarding claim 7, Mansingh discloses all the claimed subject matter as described in previous paragraph except for detecting a mismatch. However detecting a configuration mismatch is well known in the art. Clemm discloses detecting configuration mismatch (see col. 2, lines 12-14). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to detect the configuration mismatch as taught by Clemm in the system of Mansingh in order to meet specific needs.

Response to Arguments

7. Applicant's arguments filed 1/9/08 have been fully considered but they are not persuasive.

The applicant argues that *the Examiner concedes that Mansingh does not disclose passively monitoring the traffic, filtering protocol frames of a predefined protocol type by which the network controllers advertise a network topology and status of the transport network, and extracting from the filtered protocol frames information about the network topology and status of the transport network. However, the Examiner cites column 2, lines 37-47 of Fink for allegedly disclosing these features and asserts that "it would have been obvious to ... passively monitor the traffic and extract the information as taught by Fink in the system of Mansingh in order to use the information for managing the network."* Note that although Mansingh does not **explicitly** disclose passively monitoring the traffic, filtering protocol frames of a predefined protocol type by which the network controllers advertise a network topology and status of the transport

network, and extracting from the filtered protocol frames information about the network topology and status of the transport network, these steps are obviously performed because without filtering and extracting, the network monitor (NMS) will not be able to display (see display in figure 3) the network topology and status information carried in the link state advertisement message. Fink reference is used to show these well known features. The applicant further argues that *the NMS of Mansingh does not receive OSPF messages. Mansingh's system is essentially what was described in the present specification at page 3.* The examiner respectfully disagrees because Mansingh does receive OSPF message. Page 4, lines 30-32 discloses that *according to OSPF, each NE 120 sends link state advertisement message to other NEs* and col. 5, lines 17-23 discloses that *as the NMS gets pieces of the cross connect information and circuit information from the NEs, the NMS splices these pieces together and constructs representations of network circuits in a form which makes it easy for the user to trace each circuit from its source NE through the intermediate NEs to the destination(s).* Graphical user interface (GUI) module 364 displays the circuits on screen 370. In col. 5, lines 52-55, Mansingh discloses that *NMS 114 manages four management domains, each of the domains contains multiple NEs.* In contrast, page 3 of the specification discloses that *the network operator has no central tool anymore that might give him an overview over his network. It would be possible to link a presentation tool to the GMPLS controller of an arbitrary network element and **display the local topology and status information stored by this particular network element** to the operator.* The applicant also argues that *Fink discloses a sniffer for passively monitoring network traffic in a TCP/IP network to gather critical network topology information. This means the sniffer is capable of passively monitoring the IP network to extract topology information about this IP*

network. Conversely, the present invention proposes to monitor traffic on a dedicated packet-switched data network to extract topology information about an optical transport network, i.e., a completely different network, the topology of which has nothing to do with the topology of the data network that is monitored. This argument is not persuasive because Fink discloses a sniffer that passively monitors network traffic and thereby gathers network topology information. This teaching can be applied to any type of networks to collect information transmitting in the network.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN D. NGUYEN whose telephone number is (571)272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571) 272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/20/08

/Brian D Nguyen/
Primary Examiner, Art Unit 2616